

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7708

Joint Petition of Vermont Electric Power Company, Inc.,)
and Vermont Transco LLC (collectively known as)
VELCO), and Vermont Electric Cooperative, Inc. (VEC))
for a Certificate of Public Good, pursuant to 30 V.S.A.)
Section 248, authorizing the construction of: (1) a new)
VELCO 115/46 kV Substation in Jay, Vermont, to be)
located adjacent to VEC's existing Jay Peak Switching)
Station; (2) modification of transmission lines; and (3))
relocation of a residence drive and improvement of an)
access road)

Order entered: 6/27/2011

PROTECTIVE ORDER REGARDING PREFILED TESTIMONY

I. INTRODUCTION

On January 19, 2011, Vermont Electric Power Company, Inc., and Vermont Transco LLC (collectively, "VELCO"), and Vermont Electric Cooperative, Inc. ("VEC" and with VELCO, the "Petitioners") filed a Motion for Confidential Treatment of Selected Prefiled Exhibits and Testimony of Vermont Electric Power Company, Inc. that they allege constitutes Critical Energy Infrastructure Information ("CEII").¹ At the February 15, 2011, prehearing conference, I requested that the Petitioners provide additional information in support of their request for confidential treatment. On March 4, 2011, the Petitioners filed a Revised Motion for Confidential Treatment of Selected Prefiled Exhibits and Testimony of Vermont Electric Power

1. The Federal Energy Regulatory Commission ("FERC") defines CEII as:

Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.

Company, Inc. On May 25, 2011, the Petitioners submitted a CEII averment log to support their request for a protective order.² No party opposed the Petitioners' motion.

II. DISCUSSION

I have reviewed the motion and supporting materials, and conclude that the Petitioners have made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, I hereby grant the Petitioners' motion for a protective order.

To promote full public understanding of the basis for its decisions, the Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.³ Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.⁴ However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal. In determining whether to protect confidential information, we consider four issues:

- (1) Is the matter sought to be protected a trade secret or other confidential

2. Specifically, the Petitioners seek confidential treatment of lines 7-9 on page 7 of the prefiled testimony of Scott Mallory dated January 19, 2011, and exhibits VELCO-Mallory-3, 5 and 9. The Petitioners filed a redacted version of the Mallory testimony and exhibit VELCO-Mallory-3, and filed non-confidential executive summaries of exhibits VELCO-Mallory-5 and 9.

3. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket, No. 6545, ("Entergy Docket"), Order of 11/9/01 at 5-6.

4. *Id.* at 6.

research, development, or commercial information which should be protected?

(2) Does the matter sought to be protected contain CEII?

(3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?

(4) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁵

The Petitioners maintain that the information in question falls within the Federal Energy Regulatory Commission ("FERC") definition of CEII because it describes VELCO's bulk system and its exposure to system contingencies, including specific details about the VELCO system. The Petitioners maintain that the information could be used by a third party wishing to do harm to or severely damage critical electric system assets. In particular, lines 7-9 of page 7 of the prefiled Mallory testimony identifies certain specific pieces of VELCO equipment that if removed from service would result in a significant loss of load for a significant time period. Exhibit VELCO-Mallory-3 is a one-line diagram that contains data pertaining to geographic locations, voltage levels, switches and relay settings affecting not only the proposed substation, but other elements of the Vermont transmission network as well. Exhibit VELCO-Mallory-5 is an engineering report that contains data, descriptions, and power flow diagrams of the area electric system, and describes weaknesses, operating criteria and protection/control devices, area generation support, contingencies and resulting problems and potential solutions. Lastly, exhibit VELCO-Mallory-9 is an analysis of potential non-transmission alternatives to weaknesses in the area electric system and contains descriptions, diagrams and data regarding the area reliability criteria, transmission element operations, vulnerabilities and consequences.⁶

I have reviewed the motion and supporting materials, and I have applied the existing standard. I conclude that the Petitioners have made a prima facie showing that the subject information falls within the FERC definition of CEII. FERC began limiting public access to

5. See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

6. Revised Motion at 3-4.

CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. ¶61,030 (2001). FERC has since issued a series of subsequent orders that established formal procedures for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).⁷

Because the Petitioners have made a prima facie showing that the redacted information is CEII, the information warrants confidential treatment. Therefore, I grant the Petitioners' motion for confidential treatment of the information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by the Petitioners (as described in the Petitioners' Motion) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of March 16, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

7. FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

So ORDERED.

Dated at Montpelier, Vermont this 27th day of June, 2011.

s/John Cotter

John Cotter, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: June 27, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)